ABSTRACTS OF RECENT CASES

Selected from the current of American and English Decisions.

BY

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ALIEN IMMIGRANT—STOWAWAY—LIABILITY OF MASTER.—If a "stowaway," who, after discovery, has signed the ship's articles, and who has been regularly enrolled as a seaman, deserts from the ship upon her arrival at a port in this country, the master is not chargeable with a violation of the Act of Congress of the 3d of March, 1891, as such a person is not a destitute immigrant, but merely a deserting sailor: United States *v.* Sandrey, Circuit Court of the United States, Eastern District of Louisiana, December 26, 1891, Pardee, J. (48 Fed. Rep., 530).—*H. L. C.*

ABORTION—EVIDENCE—PERSON ON WHOM THE OPERATION IS PERFORMED IS NOT AN ACCOMPLICE.—Defendant, who was indicted for criminal malpractice, at the trial requested the judge to charge that the woman was an accomplice. Held: That the person on whom the operation was performed was not an accomplice: Commonwealth *v.* Fallansbee, Supreme Judicial Court of Massachusetts, January 6, 1892, Lathrop, J. (29 Northeast. Rep., 471).—*W. W. S.*

BILL OF EXCHANGE—ACCEPTANCE—REVOCATION.—The payee of a bill of exchange presented it through a bank, its authorized agent, to the drawee. Acceptance was indorsed on the bill by the drawee's treasurer and delivered to the bank. On the same day the drawee's treasurer learned of the insolvency of the drawer, and the next day applied to the cashier of the bank for leave to revoke the acceptance, which he refused to do, and notice was thereupon given to the bank to refuse payment. At time of acceptance drawer had no funds in hands of drawee. Upon an action on the bill by the payee against the drawee, held, that an acceptance delivered to the agent of the payee, duly authorized to receive it, is legally a delivery to the payee, and by such delivery the contract becomes *eo instanti* a completed one between the acceptor and the principal owner of the bill. Before delivery of the acceptance to the payee or his agent, the acceptor may erase his name, and he is not bound. But after delivery the acceptance cannot be revoked. Nor, in the absence of fraud on the part of the payee, is the drawee's insolvency or lack of funds in the drawee's hands an answer to his claim as a *bona-fide* holder of the bill: Trent. Tile Co. *v.* Dearborn Nat. Bank of Chicago, Supreme Court of New Jersey, January 2, 1892 (23 Atl. Rep., 423).—*H. N. S.*

BONDS—RECITAL ON BONDS ISSUED BY MUNICIPAL CORPORATION—ESTOPPEL.—In an action by an innocent purchaser for value, a municipality is estopped from denying allegations on the face of its bond that it has been issued according to law, and that the total amount of the issue

does not exceed the amount prescribed by law: Chafie Co. *v.* Potter, Mr. Justice Lamar (Mr. Justice Gray dissenting), January 4, 1892 (142 U. S., 355).—*W. D. L.*

COMMON CARRIERS — TORTS OF EMPLOYEES — LIABILITY FOR — FALSE IMPRISONMENT BY CONDUCTOR.—A conductor of defendant, while not on duty as a conductor, had plaintiff, lawfully on a car of the defendant, imprisoned, mistaking him for a man who, on a prior occasion, had made a disturbance on the car. Held: That the defendant was liable for the tort of its conductor: Gillingham *v.* Ohio River Railroad Co., Supreme Court of Appeals of West Virginia, December 12, 1891, Holt, J. (14 Southwestern Rep., 243).—*W. W. S.*

CONFLICT OF LAWS—COMITY—DEATH BY WRONGFUL ACT—WHERE SUIT MAY BE BROUGHT.—Plaintiff was administrator of a person killed in Connecticut by the wrongful act of defendant. Held: That plaintiff could sue in Massachusetts, under a statute of Connecticut, to recover damages for decedent's death: Higgins *v.* Central, etc., Railroad Co., Supreme Judicial Court of Massachusetts, January 7, 1892, Barker, J. (29 Northeast. Rep., 534).—*W. W. S.*

CONSTITUTIONAL LAW—CONSTRUCTION OF FIFTH AMENDMENT.—The constitutional guarantee that no person . . . shall be compelled in any criminal case to be a witness against himself is violated if one is compelled to testify in any criminal case, though he is not being prosecuted; and the fact that his testimony cannot be used against him in any Court of the United States, in any criminal proceeding, does not make the proceedings against him, to compel him to so testify, constitutional: Councelman *v.* Hitchcock, Mr. Justice Blatchford, January 11, 1892 (142 U. S., 547).—*W. D. L.*

CONSTITUTIONAL LAW — CORPORATIONS — THE TERM "EQUAL LAWS" EXPLAINED.—A State statute does not deprive railroad corporations of the equal protection of the laws which provide that the expense of a railroad commission created by the laws of the State be borne by the railroad corporations in proportion to their gross receipts and the n nuber of miles operated within the State. It is a principle of law that a tax is not unequal which falls exclusively on those persons or corporations for whose benefit or regulation the money collected is expended: Charlotte, etc., Railroad *v.* Gibbes, Mr. Justice Field, January 4, 1892 (142 U. S., 386).—*W. D. L.*

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — VALIDITY OF STATE TAXATION FOR USE OF FRANCHISE.—A State may tax a railroad corporation engaged in interstate commerce for the exercise of its franchise within the State, which tax is based on the gross profits of the railroad, and the proportion which the number of miles operated in the State bears to the whole number of miles operated by the railroad corporation: Maine *v.* Grand Trunk Railway Co., Mr. Justice Field, December 14, 1891 (142 U. S., 217).—*W. D. L.*

CONSTITUTIONAL LAW—WHEN FEDERAL COURTS WILL RESTRAIN STATE OFFICERS FROM CARRYING OUT UNCONSTITUTIONAL STATE LAWS.—In order that an injunction may issue from a Federal court to restrain an officer of the State from executing the laws thereof, it is not only necessary for the complainant to show that the State law is unconstitutional, but also to make out a case that can be brought under some recognized head of equity jurisdiction, such as that the act of the officer of the State would cause the complainant irreparable injury: Pacific Express Company *v.* Seibert, Justice Lamar, January 4, 1892 (142 U. S., 339).—*W. D. L.*

CONTRACTS, CONSTRUCTION OF—JOINT OR SEVERAL.—The plaintiff sued upon a written contract wherein it was agreed that if the nineteen defendants would subscribe $300 among them and furnish the milk, he would build a factory and manufacture cheese for them at a small rate per pound. The contract was signed by the nineteen defendants, who set opposite their names the various amounts. It was held that the contract was several; that it consisted of as many distinct contracts as there were signers: Frost *v.* Williams *et al.*, Supreme Court of Dakota, January 21, 1891 (50 N. W. Rep., 96).—*J. A. McC.*

CONTRACT—CONSIDERATION.—Where the plaintiff, the owner of stolen property, agreed with the *bona-fide* purchaser of the property that if the latter would return part of the property stolen he could keep the remainder, the Court held the agreement to be void for want of consideration, upon the ground that the defendant, in agreeing to yield up part of the stolen property, was only doing that which he was bound to do: Morgan *v.* Hodges *et al.*, Supreme Court of Michigan, December 22, 1891 (50 N. W. Rep., 876).—*J. A. McC.*

CORPORATION—DUTY OF OFFICERS TO STOCKHOLDERS.—A director of a corporation having in his official capacity knowledge of facts enhancing the value of the corporate stock, of which the stockholders generally were ignorant, bought stock from a holder at a price below its real value. In an action for deceit, held, that a director is not, because of his office, in duty bound to disclose to an individual stockholder, before purchasing his stock, what he may know as to facts affecting the value of the stock. While he is to some extent a trustee for the stockholders as a body in respect to the property and business of the corporation, he does not sustain that relation to individual stockholders with respect to their several holdings of stock, over which he has no control: Crowell *v.* Jackson, Court of Errors and Appeals of New Jersey, November 17, 1891 (23 Atl. Rep., 426).—*H. N. S.*

CORPORATIONS—CAPITAL OF CORPORATIONS NOT A TRUST FUND—LIABILITY OF "BONUS" STOCKHOLDER.—Whenever a person becomes a stockholder in a corporation by reason of his being the recipient of a "bonus" issue of stock, subsequent creditors contracting upon the faith of the representations of the corporation as to the amount of its paid-in stock, cannot charge such person for the amount of the stock held by him, upon the theory that the assets of a corporation constitute a trust

fund for the payment of creditors. The property of a corporation only is a trust fund for the payment of creditors in the sense that all creditors are entitled to have their debts paid before there is any distribution of the assets among the stockholders. Nor can such a stockholder be held liable upon the theory that when it was issued he impliedly agreed to pay for it; for the agreement in the issue of bonus stock is specific that no consideration shall pass therefor. A bonus stockholder can only be charged upon the theory that he is a party to a fraud in enabling the corporation to misrepresent its financial standing. But in order to so charge him, the plaintiff must show that he paid a full consideration for the claim, if he is the assignee of the original creditor, for equity will never interfere in favor of one who purchases claims for a nominal consideration for purposes of speculation: Hoopes *v.* the Northwestern Manufacturing Co., Supreme Court of Minnesota, January 18, 1892 (50 N. W. Rep., 117).—*J. A. McC.*

DEEDS, RESTRICTIONS IN—RIGHT OF VENDEES INTER SE.—A grantor conveyed certain contiguous lots by contemporaneous deeds, each of which restricted buildings to be erected on the lots to "first-class dwelling-houses only." Held: That the restriction was imposed on each lot for the benefit of all the others, and was enforceable by each owner against all the others: Hano *v.* Bigelow, Supreme Judicial Court of Massachusetts, January 8, 1892, Knowlton, J. (29 N. E. Rep., 628).—*W. W. S.*

EVIDENCE—HOMICIDE—RES GESTÆ.—Defendant was indicted for murder. At the trial evidence was admitted to the effect that immediately after the killing the accused started off, and a bystander said, "Call the police," whereupon the accused snapped his rifle at her. Held: That this evidence was a part of the *res gestæ* and properly admitted: Supreme Court of Georgia, December 28, 1891, per Curiam (14 S. E. Rep., 208).—*W. W. S.*

FREIGHT—LIABILITY OF BROKER.—An action for freight will not lie against a broker, whose only authority over the cargo is to sell it and pay the freight out of the proceeds: Damora *v.* Craig, District Court of the United States, Eastern District of Pennsylvania, November 10, 1891, Butler, J. (48 Fed. Rep., 737).—*H. L. C.*

GAS COMPANIES—SUBJACENT SUPPORT FOR PIPES—EMINENT DOMAIN—DAMAGES EVIDENCE.—A gas company entered upon plaintiff's farm, underneath which was a coal bed, and, in the exercise of its right of eminent domain, appropriated a strip of land running through the farm, and laid therein its pipes for the transportation of gas. In an action for damages, held, that testimony to prove the character of the soil through which the pipe line runs, the depth of the line below the surface of the ground, the proximity of the line to the surface of the underlying coal, the danger of the surface falling in when coal is removed, the probable breaking of the pipes, the danger of gas escaping into the mine, is both competent and relevant for the purpose of showing the general depreciation in the market value of the property, which is affected by the

right of subjacent support which is necessarily included in the servitude fastened upon the land: Jefferson Gas Co. *v.* Davis, Supreme Court of Pennsylvania, January 4, 1892, Sterret, J. (23 Atl. Rep., 218).—*H. N. S.*

HUSBAND AND WIFE—RIGHT OF WIFE TO SUE IN HER OWN NAME—ACTION BY WIFE FOR ENTICEMENT OF HUSBAND.—Statutes of Indiana give married women the right to sue alone for injuries to their persons or property. Held: That a married woman could maintain an action in her own name against one who wrongfully enticed her husband from her: Haynes *v.* Nowlin, Supreme Court of Indiana, December 8, 1891, Elliott, C. J. (29 N. E. Rep., 389).—*W. W. S.*

INDICTMENT — USE OF ENGLISH LANGUAGE.—A provision of the penal code of California declares that an information must contain a statement of the offence in ordinary language to enable a person of common understanding to know what is intended. Hence, where an information contained a photographic copy of a lottery ticket in the Chinese language, which was not translated into English, it was held not to be in ordinary language within the contemplation of the code: People *v.* Ah Sinn, Supreme Court of California, January 9, 1892 (28 Pac. Rep., 680).—*J. A. McC.*

INJURY TO EMPOYEE—KNOWLEDGE OF DANGER—CONTRIBUTORY NEGLIGENCE.—Where the plaintiff's intestate was killed by the fall of a mine chamber, in operating the "caving-in" process of mining, the fact that the defendant, upon being *apprised to* of the dangerous condition of affairs, had insisted that the men should return to the work, precludes the defendant from setting up the defence of contributory negligence of the employee in remaining at work, having knowledge of the dangerous condition of the mine. Employees on entering into a hazardous employment take the ordinary risks attending that service; but when servants complain of what appears to be an impending peril, and they notify the master of the danger, the latter cannot refuse to relieve them and insist upon their return to the place of danger, and then charge them with contributory negligence if they are injured in consequnce of obeying such orders: Schlacker *v.* Ashland Iron Mining Company, Supreme Court of Michigan, December 22, 1891 (50 N. W. Rep., 839).—*J. A. McC.*

INSURANCE—CONDITION OF POLICY—OPEN LIGHTS.—The use of open lights in making repairs to the machinery of a mill is not a violation of the terms of a policy of insurance which forbids the use of open lights upon the premises insured, where it is shown that permission is given by the policy to make repairs, and that it is impossible to repair without the use of open lights. The granting of the permission to make repairs naturally presumes greater hazard in the doing of the thing permitted, and such permission must be deemed to have included all the incidents of that privilege or the right to do whatever was necessary in the course of such repairs: Ausable Lumber Co. *v.* Detroit Mfg. Co., December 22, 1891 (50 N. W. Rep., 870).—*J. A. McC.*

INSURANCE — PAYMENT OF PREMIUMS WHEN DUE — WAIVER.— Where a policy of life insurance provides, "in case of default of the payment of any annual premium on the day it falls due, the policy shall become void and insurance shall cease," the payment of the premiums at the specified time is a condition precedent to the continuance of the risk, and it is not affected by a custom of the company to waive the prompt payment of the premiums and accept them within thirty days from the time they fall due: Richardson *v.* Mutual Life Insurance Co. of Kentucky, Court of Appeals of Kentucky, January 21, 1892, Pryor, J. (18 S. W. Rep., 165).—*H. L. C.*

INTOXICATING LIQUORS, SALE OF — WHAT CONSTITUTES SOCIAL CLUBS—LICENSES.—A law of South Carolina made it unlawful to sell liquors without a license. A *bona-fide* incorporated social club kept a stock of liquors on hand which its members could obtain on payment of not more than the cost price of the same. Held: That there was no sale here, and that the club need not have a license: State *v.* McMaster, Supreme Court of South Carolina, January 7, 1892, McGowan, J. (14 Southeastern Rep., 290).—*W. W. S.*

MANDAMUS—CORPORATIONS.—When a railroad corporation is authorized to run its line from one point to another by "the most eligible route as shall be determined by said company," a mandamus will not lie to compel the corporation to maintain a station at a particular town through which said company has elected to pass, though it appears that the company once maintained a station there, and changed the location of the station to a place where, at the time of the change, no house existed, but where it owned the title to the town site, the Court holding that the company is competent to decide what is the best situation for railroad stations: Northern Pacific Railroad *v.* Dustin, Mr. Justice Gray; dissenting Justices Field, Harlan, Brewer, January 4, 1892 (142 U. S., 492).—*W. D. L.*

MASTER AND SERVANT—RISK OF EMPLOYMENT—QUESTION FOR JURY.—Plaintiff was employed by defendant, and was obliged to use certain steps in leaving her work. The steps became icy, and plaintiff was injured on them. The steps were not icy, nor was there any reason to suppose that the business involved any risk in regard to them when plaintiff entered defendant's service. Held: That the danger incurred by the plaintiff in using the steps was not a risk of employment, and that the question of negligence was for the jury: Fitzgerald *v.* Paper Co., Supreme Judicial Court of Massachusetts, December 19, 1891, Knowlton, J. (29 N. E. Rep., 464).—*W. W. S.*

NEGLIGENCE—CONTRIBUTORY—GETTING ON A MOVING STREET CAR.—Attempting to get on a street car while in motion is not contributory negligence *per se*, but is a question for the jury: North Chicago Street Railway Co. *v.* Williams, Supreme Court of Illinois, January 18, 1892, Magurder, C. J. (29 N. E. Rep., 672).—*W. W. S.*

PATENT—INFRINGEMENT—ATTACHMENT.—Motion for an attachment for violation of an injunction against infringement of a patent wil

be denied where a new question has arisen which was not considered at the time of the granting of the injunction, and which requires a reexamination of the limits of the patent: Enterprise Manufacturing Co. *v.* Sergeant, Circuit Court of United States, District of Connecticut, December 23, 1891, Shipman, J. (48 Fed. Rep., 453).—*H. L. C.*

POLICE POWER—PUBLIC HEALTH—MONOPOLY.—An ordinance of the city of San Francisco granting to one A. the exclusive right of removing from the city limits all carcasses of dead animals, not slain for food, that shall not be removed or disposed of by the owner within twelve hours after the death of such animal, in such a manner as not to become a nuisance, and further requiring the owner of any dead animal not intending to remove the same within the specified time, in such a manner as not to become a nuisance, to deposit a notice thereof in a box to be provided for that purpose, is a valid exercise of the police power for the protection of the public health, and is not invalid as creating a monopoly, nor as depriving persons of their property without due process of law, nor as a contract in restraint of trade: National Fertilizing Co. *v.* Lambert, Circuit Court of United States, Northern District of California, December 7, 1891, Hawley, J. (48 Fed. Rep., 458).—*H. L. C.*

PROMISSORY NOTE, ALTERATION OF—LIABILITY OF SURETY.—Plaintiff sold a horse to A., and in payment took A.'s note indorsed by defendant. All parties understood that this note should be for $175, but by a mistake it was made for $170. After its execution plaintiff had the amount of the note changed to $175. Held: That in a court of law and equity, defendant, as surety, was not relieved from his liability on the note by this change: Busjalm *v.* McLean, Appellate Court of Indiana, January 6, 1892, Crumpacker, J. (29 N. E. Rep., 494).—*W. W. S.*

PROMISSORY NOTE—RIGHT OF INDORSEE OF FOREIGN EXECUTOR TO SUE WITHOUT ADDITIONAL ADMINISTRATION.—Although a foreign executor cannot sue and recover a debt due to estate of decedent, yet a person to whom he has indorsed a note may recover without additional administration, if it does not appear that there are debts owing by decedent to residents of the State where suit is brought, and if it also does not appear that there is any statute of the State of domicile of decedent prohibiting such transfer: Solinsky *v.* Fourth National Bank of Grand Rapids, Supreme Court of Texas, November 13, 1891, Henry, J. (17 S. W. Rep., 105).—*H. L. C.*

PUBLIC WAREHOUSEMAN—SALE UPON COMMISSION—CONVERSION.—A public warehouseman, who receives and sells tobacco, receiving therefor a commission only and having no property interest in the goods, is not guilty of a conversion of them by a mere sale on account of the person who consigns them to his house for sale, if he has no notice of an adverse claim: Abernathy *v.* Wheeler, Court of Appeals of Kentucky, December 5, 1891, Bennett, J. (17 S. W. Rep., 858).—*H. L. C.*

RAILROADS—PUBLIC AND PRIVATE USE—EMINENT DOMAIN.—Where a railroad, chartered under the general laws of the State, is being

constructed for private use, the exercise of the power of eminent domain will be restrained: Weidenfeld *v.* Sugar Run R. Co., Circuit Court of United States, Western District of Pennsylvania, January 7, 1892, Reed, J. (48 Fed. R., 615).—*H. L. C.*

SALE—INVALID TAX-SALE—COUNTY OFFICER—RIGHT OF TO SHOW THAT HE ACTED IN EXCESS OF HIS AUTHORITY.—A county treasurer accepted a ditch certificate in payment for land sold for taxes. Part of the taxes for which the land was sold had been paid, and the treasurer was then sued by the purchaser to recover a part of the purchase money under a statute of Indiana, which makes a treasurer liable to the holder of a certificate of sale when he sells lands for taxes which have been previously paid. Held: That the treasurer was not estopped from showing that he had no authority to receive the ditch certificate in payment for the land; that payment by the ditch certificate was not a cash payment, and that plaintiff could not recover: Baldwin *v.* Shill, Appellate Court of Indiana, January 6, 1892, New, J. (29 Northeastern Rep., 629).—*W. W. S.*

SALES—RECISION—RIGHTS OF SELLERS.—Purchasers of lumber were unable to pay for it according to contract. The contract was cancelled, and the lumber was to be redelivered to the sellers. In pursuance of this agreement the purchasers executed a writing whereby they agreed to return the lumber to the sellers, holding it for them in their (the purchasers') yard subject to their order. The lumber was then marked with the sellers' name. In an action for trespass brought by the sellers against the sheriff for levying executions on judgments against the purchasers upon the lumber, held, that the lumber became the property of the sellers by marking it with their name and piling it separately, and it was unnecessary that it should be transferred to their place of business, as a change of location is not in all cases necessary to constitute a valid delivery of a chattel as against creditors: Ayers *et al.*, *v.* McCandlees, Sheriff, Supreme Court of Pennsylvania, January 5, 1892, per Curiam (23 Atl. Rep., 344).—*H. N. S.*

SEAWORTHINESS—MASTER—MATE —Seaworthiness includes a competent master and crew, and it is therefore the duty of the owners of a ship to provide for such a contingency as the death of the master on a voyage to the Gold Coast, by selecting a mate competent to assume command if such an event occurs: The Giles Loring, District Court of United States, District of Maine, April 10, 1890, Webb, J. (48 Fed., 463).—*H. L. C.*

TELEGRAPH COMPANY—MISTAKE IN TRANSMISSION—CONTRIBUTORY NEGLIGENCE—UNREPEATED MESSAGES.—Plaintiff receives a message purporting to come from South Carolina instead of Staten Island, whence it was in reality sent. Although he expected a message from Staten Island, he went to South Carolina without making any inquiry of defendant's agents. Held: That he was not guilty of contributory negligence in so doing and could recover from defendant his travelling expenses. The fact that the message was unrepeated can have no bearing on the case, as the condition as to repeated messages applies to

the sender thereof, not to the recipient: Tobin *v.* W. U. Tel. Co., Supreme Court of Pennsylvania, January 4, 1892, per Curiam (23 Atl. Rep., 324).—*H. N. S.*

WILLS — AMBIGUITY — EVIDENCE OF TESTATOR'S INTENTION— WHEN ADMISSIBLE.—Testator left a bequest "to the Sailors' Home in Boston," which was claimed by the National Sailors' Home and by the Boston Ladies' Bethel Society, both Massachusetts corporations working in Boston. Held: That evidence to the effect that testator was a prominent Baptist, interested in the work of a Baptist Church that was represented in the management of the Boston Ladies' Bethel Society, a Baptist institution which had maintained a "Sailors' Home in Boston," since several years prior to testator's death, and prior to the testator's will, began the creation of the "Sailors' Home Fund," which was known to the testator, was properly admitted to show testatator's intention: Faulkner *v.* National Sailors' Home, Supreme Judicial Court of Massachusetts, January 19, 1892, Barker, J. (29 N. E. Rep., 645).—*W. W. S.*

WILL, CONSTRUCTION OF.—The testator left children and step-children. He gave to his children, whom he described as children "which came to me by marriage with my wife." He then gave the residue to his "wife and children." Held: his step-children had no right of participation in the fund: *In re* Kurtz's Estate, Supreme Court of Pennsylvania, January 4, 1891, per Curiam (23 Atl. Rep., 322).—*H. N. S.*

CONSTITUTIONAL LAW—IMMIGRATION LAWS CONSTRUED.—The Federal Government, as a national government, has complete control over the subject of the immigration of aliens to the United States. It is constitutional for Congress to provide that the decision of the Inspector of Customs as to the right of an alien immigrant to land in the United States shall be final. Congress *has* provided that the decision of the Treasury Department shall be final, and therefore, on a writ of habeas corpus to the circuit courts on behalf of an immigrant about to be returned to the country whence she came, the only fact to be determined by the Court is whether the Treasury Department has determined whether the immigrant had a right to land: Nishimura Elin *v.* United States, Mr. Justice Gray, January 18, 1892 (142 U. S., 651); Mr. Justice Brewer, dis't.—*W. D. L.*